

REMARKS

Request for Reconsideration

Applicant has carefully considered the matters raised by Examiner in the outstanding Office Action, but remains of the position that patentable subject matter is present. Applicant respectfully request reconsideration of Examiner's position based on the amendments to the claims and the following remarks.

Claim Status and Comments

Claims 1, 2 and 4-9 are pending. The limitations of claim 3 have been incorporated into claim 1 and claim 3 has been cancelled.

Claims 1, 2 and 4 have been amended to address the claim objections and the rejections under 35 U.S.C. § 112.

Claims 5-9 are new. Claim 5 is claim 3 written in independent form without the longitudinal groove limitation of claim 1. Claim 6 mirrors claim 4, except the without location of the openings, and further definition to stiffening bands. Claim 7 defines the location of the openings. Claim 8 defines the grooves in the outer sole. Claim 9 mirrors claim 2.

Allowable Subject Matter

It was noted that claim 3 would be allowable if rewritten in independent form, including all of the limitations of the base claims and any intervening claims.

Claim 3 had been dependent upon claim 1. Thus, claim 1 has been amended to incorporate the limitations of claim 3.

It is respectfully submitted that claim 1 as amended herein and claims 2 and 4, which depend therefrom, are allowable.

Claim Objections

Claims 1-4 had been objected to for various informalities. In claim 1, “the area”; “the sole of the foot”; and “its inner and outer sides” all lack proper antecedent basis. In claim 2, “the edge” and “the thickness” lack proper antecedent basis.

Claims 1 and 2 have been amended herein to correct antecedent basis issues.

Claim Rejections – 35 U.S.C. § 112

Claim 4 had been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The examiner noted that claim 4 should depend from claim 3.

Claim 3 has been canceled and incorporated into claim 1. Thus, claim 4 now properly depends upon claim 1.

Claim Rejections – 35 U.S.C. § 102

Claims 1 and 2 had been rejected under 35 U.S.C. § 102(b) as being anticipated by Rosen (U.S. Patent No. 4,967,492).


The examiner noted that claim 3 was allowable if rewritten in independent form. The limitations of claim 3 have been incorporated into claim 1. Thus, it is respectfully submitted that claim 1 and the claims which depend therefrom are patentable over Rosen.

Since claim 5 contains the allowable subject matter of claim 3, it is submitted that claim 5 is also allowable along with the dependent claims 6-9.

Conclusion

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance and such action is respectfully requested. Should any extensions of time or fees be necessary in order to maintain this Application in pending condition, appropriate requests are hereby made and authorization is given to debit Account Number 02-2275.

Respectfully submitted,
LUCAS & MERCANTI, LLP

By: 
Donald C. Lucas, Reg. No. 31,275
Attorney for Applicants(s)
475 Park Avenue South, 15th Floor
New York, New York 10016
Tel. (212) 661-8000 Fax (212) 661-8002

DCL/JRW/CMJ/ns